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may be questioned whether this view of the judicial power is not too narrow. It is true that in the consideration of State-imposed rates under the Fourteenth Amendment, the courts have considered the effect upon the income of a company, that is, whether the company was deprived of a reasonable profit in its business. But under the Fifth Amendment, where the carrier complains of a specific maximum rate fixed by the commission, as unreasonable, would it not be held that a rate is confiscatory, which prevents the carrier from charging a reasonable compensation for a service rendered. The standard of reasonableness is not clearly defined, and it may be practically impossible to determine the actual cost of a specific service of a carrier. It is none the less true, however, that the legal right to charge a reasonable compensation for any service exists, and when the rate is questioned as to the service rendered, it is determined by the courts in the light of such evidence as can be secured. A carrier deprived of the right to charge this reasonable compensation would, therefore, be deprived by a legislature or commission of his property without due process of law. It would be as immaterial to urge that he was allowed to charge reasonable rates on other commodities, as it would be that the individual has other resources left when he is deprived of any property without due process of law.

The book is an interesting and valuable contribution to the thoughtful study of a great subject.

F. N. JUDSON.

The Heart of the Railroad Problem: The History of Railway Discriminations in the United States, the Chief Efforts at Control and the Remedies Proposed, with Hints from Other Countries.

By Professor FRANK PARSONS, Ph.D. (Boston: Little, Brown and Company. 1906. Pp. 364.)

Professor Parsons' book differs radically from that of Judge Noyes, in that the author does not write from the standpoint of a lawyer or railroad president, but from that of an independent investigator who is convinced that "The Heart of the Railroad Problem" lies in the impartial treatment of shippers.

The book shows exhaustive study and the examination of a vast amount of material. The author states that in its preparation he "traveled over nine countries of Europe and over three-fourths of the United States, studying railways, meeting railroad presidents and

managers, ministers of railways, and men of every calling in the effort to get a full understanding of the railway situation," and that the reports and decisions of commissions and courts in railroad cases in the United States have been thoroughly examined and the railroad literature of other countries extensively studied."

The author is so thoroughly convinced of the vice of discrimination and preferences, that he finds nothing but evil in any form of discrimination. To him all preferences are undue, and all discriminations unjust. The discriminations in freight rates growing out of the conflict of local interests, the complaints of rival points of production, distribution and markets, are to him as objectionable as the grossest form of personal favoritism. That there are evils in discrimination between localities in the application of the value of service principle by the railroads, goes without saying, but in the language of Commissioner Prouty, in his recent article upon the effect of the new rate bill: "It is difficult to see how such discriminations can be altogether avoided, unless our waterways are to be shut up and the benefits of geographical opportunities entirely ignored." In the intense commercial rivalry between localities, it is inevitable that there should be fruitful sources of complaint as to any adjustment of freight rates. The author, however, apparently can see no difference between such discriminations between localities and the vicious practice of personal favoritism, which he alike condemns. It is this failure to recognize the distinction between just and unjust discriminations which is enforced both by the law and judicial construction of the Interstate Commerce Act, which seriously impairs the book's discussion of this complex act.

The author condemns the Senate, saying that it is too full of men interested in the railroads, one way or another, to make it easy to pass any measure which may seriously affect the profits of the roads. The book was published before the recent amendments made by the Senate to the rate bill, which very materially broaden its scope and will increase its efficiency. The author does not hesitate to criticise also the Supreme Court and says that the court has not interpreted the Interstate Commerce Act according "to its meaning and well known intent, but in a narrow and technical way that has defeated any advantage from the real purpose of the law." Thus on p. 283, it is said, referring to the decision on the long and short haul section, that "it is an absurdity to rule that the law is valid, and then decide that the

railroads may escape from the long haul sections by means of dissimilar circumstances created by themselves." This statement is inaccurate and misleading, as it ignores the real basis of the ruling of the court. What the court did rule was that where the lower rate in the longer haul was enforced by controlling competition, the circumstances and conditions were not "similar" within the meaning of the act.

While the book shows very extended investigation and great industry, it contains a number of *ex parte* statements and charges, reported interviews, extracts from petitions and addresses, where no means of verification are afforded, which seriously impair its value as a contribution to the serious discussion of a grave and complicated subject. A notable departure from this practice is in Chapter XIX, on the Colorado Fuel rebates by the Santa Fe Railroad, where a fair statement of both sides to the controversy is given. The book is interesting and readable, however, in its graphic description of the devious forms of rebating and personal discrimination, and in its graphic statement of the difficulties and anomalies which necessarily inhere in the application in this country of the principles of "what the traffic will bear" in the adjustment of freight rates.

The author concludes that the railroads of the United States are "unique in two respects, the efficiency of the service they render, the extent and viciousness of the discriminations which they make." The arguments for and against pooling are fairly stated. He recognizes the impolicy of prohibiting pooling and believes that it ought to be legalized, but says at the same time that this could not be relied upon to abolish discriminations and would leave the worst forms untouched. He recognizes that the increased rate-making power given to the Interstate Commerce Commission would not prevent discrimination. It is clear that it would be just as easy to cut rates made by a commission as to disregard the rates made by the railroads and published by them and thereby made obligatory under the law. His conclusion is that nothing short of the "general rate-making power" can do the work properly, and that there is no remedy for discrimination except in the dominance of public interest in the regulation of railroad rates; that is, in some form of public instead of private control. He admits that it cannot be denied that great inconvenience and some injustice might be inflicted upon the railroads by public rate revision, and that it seems to come down to

the choice of the "least of two evils." He does not attempt to explain how complete rate-making by public authority would reconcile the conflicting claims of competing localities, and intimates that "distance" tariff under public ownership may be the only solution.

F. N. JUDSON.

The Law of Interstate Commerce and its Federal Regulation.

By FREDERICK N. JUDSON. (Chicago: T. H. Flood and Company. 1905. Pp. xix, 509.)

In his preface our author tells us that "the purpose of this book is to present in a compact form the law of interstate commerce as declared by the courts since the adoption of the Constitution, and also as enacted by Congress and applied by the Interstate Commerce Commission in the direct exercise of the power of Federal regulation." An examination of the book, however, discloses at once that the main purpose of the book is to discuss the Federal regulations of interstate commerce and only briefly and incidentally the "law of interstate commerce as declared by the courts since the adoption of the Constitution." That this must be so appears from the fact that only the first forty-eight pages deal with the constitutional as distinguished from the statutory law on the subject, the remainder of the five hundred and more pages being devoted to: (1) a general discussion, historical and critical, of Federal regulation (about one hundred pages); (2) the text of Federal statutes regulating interstate commerce, with annotations (about two hundred and fifty pages); and (3) procedure before the Interstate Commerce Commission, forms for the same, and tables of cases. As the matter stands, any one who appeals to this work for an adequate discussion of the constitutional law of the subject will be disappointed. So far as they go, the forty-eight pages are good enough, but they are hopelessly inadequate to bear the burden thus thrust upon them.

However, the foregoing is, after all, a criticism rather of the title and preface than of the book itself. If we regard it as intended to set forth the Federal statutory regulations upon the subject, with annotations showing the judicial construction of the statutes and the decisions of the Interstate Commerce Commission made in the course of their application, the book is decidedly not without merits. Examining the book from this point of view, we find that in arranging